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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 BARDIUS MILLER DOUGLASS,) CASE NO. ED CV 15-1946-RGK (PJW)
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Petitioner,
v.
UNKNOWN,
Respondent.

[PROPOSED] ORDER DISMISSING
HABEAS CORPUS PETITION AND
DENYING CERTIFICATE OF
APPEALABILITY

Before the Court is a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 in which Petitioner, who is confined in Atascadero State Hospital, is apparently trying to challenge certain criminal proceedings in San Bernardino County Superior Court. (Petition at 1.) For the following reasons, the Petition is dismissed without prejudice.

According to the Petitioner, he has been found incompetent to stand trial. (Petition at 1.) Nevertheless, he believes that he was entitled to a preliminary hearing and complains that he was not afforded that hearing within ten days (presumably of his arrest). (Petition at 6.) Petitioner sets out in the Petition that he has not presented this claim to the state supreme court. (Petition at 3.)

1 The Court has a duty to screen habeas corpus petitions before
2 ordering service on a respondent. See *Mayle v. Felix*, 545 U.S. 644,
3 656 (2005). In doing so, if it plainly appears from the face of a
4 petition that a petitioner is not entitled to relief, the Court can
5 dismiss the petition at the outset. See Rule 4, Rules Governing
6 § 2254 Cases.

7 As a matter of comity between state and federal courts, a federal
8 court will generally not address the merits of a habeas corpus
9 petition unless a petitioner has first exhausted his state remedies by
10 presenting his claims to the highest court of the state. 28 U.S.C.
11 § 2254(b); *Rose v. Lundy*, 455 U.S. 509, 522 (1982); see also *Cooper v.*
12 *Neven*, 641 F.3d 322, 326 (9th Cir. 2011). Because Petitioner has not
13 presented his claim to the California Supreme Court, it is unexhausted
14 and subject to dismissal on that ground. See *Rasberry v. Garcia*, 448
15 F.3d 1150, 1154 (9th Cir. 2006) ("Once a district court determines
16 that a habeas petition contains only unexhausted claims, it need not
17 inquire further as to the petitioner's intentions. Instead, it may
18 simply dismiss the habeas petition for failure to exhaust.").

19 Accordingly, the Petition is dismissed without prejudice.
20 Further, because Petitioner has not made a substantial showing of the
21 denial of a constitutional right, a certificate of appealability will
22 not issue in this action. See 28 U.S.C. § 2253(c)(2); Fed. R. App. P.
23 22(b); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

24 IT IS SO ORDERED

25 DATED: October 2, 2015



26
27 R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

28 Presented by:



PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE